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SENATE BILL 310

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Phil A. Griego

FOR THE INVESTMENTS AND PENSIONS OVERSIGHT COMMITTEE

AN ACT

RELATING TO RETURN TO EMPLOYMENT; AMENDING PROVISIONS OF THE  
PUBLIC EMPLOYEES RETIREMENT ACT AND THE EDUCATIONAL RETIREMENT  
ACT CONCERNING RETIREES WHO RETURN TO EMPLOYMENT; RECONCILING  
MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003;  
RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN  
LAWS 2004 BY REPEALING LAWS 2004, CHAPTER 2, SECTION 1.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 10-11-8 NMSA 1978 (being Laws 1987,  
Chapter 253, Section 8, as amended by Laws 2004, Chapter 2,  
Section 1 and by Laws 2004, Chapter 68, Section 4) is amended  
to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--  
BENEFITS CONTINUED FOR CERTAIN RETIRED MEMBERS--EMPLOYER  
CONTRIBUTIONS.--

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1           A. A member may retire upon fulfilling the  
2 following requirements prior to the selected date of  
3 retirement:

4                   (1) a written application for normal  
5 retirement, in the form prescribed by the association, is filed  
6 with the association;

7                   (2) employment is terminated with all  
8 employers covered by any state system or the educational  
9 retirement system;

10                   (3) the member selects an effective date of  
11 retirement that is the first day of a calendar month; and

12                   (4) the member meets the age and service  
13 credit requirement for normal retirement specified in the  
14 coverage plan applicable to the member.

15           B. The amount of normal retirement pension is  
16 determined in accordance with the coverage plan applicable to  
17 the member.

18           C. Except as provided in Subsection D, ~~[or]~~ E or F  
19 of this section, a retired member may be subsequently employed  
20 by an affiliated public employer if the following conditions  
21 apply:

22                   (1) either

23                                   (a) the subsequent employment of the  
24 retired member commences prior to July 1, 2007; or

25                                   (b) the subsequent employment of the

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1 retired member commences between July 1, 2007 and June 30, 2009  
2 and the affiliated public employer is a political subdivision  
3 of the state whose governing body has adopted a resolution  
4 declaring that the subsequent employment of the retired member  
5 will fill a critical need of the political subdivision;

6           ~~[(1)]~~ (2) the member has not been employed as  
7 an employee of an affiliated public employer for at least  
8 ninety consecutive days from the date of retirement to the  
9 commencement of employment or re-employment with an affiliated  
10 public employer. If the retired member returns to employment  
11 without first completing ninety consecutive days of  
12 retirement:

13                   (a) the retired member's pension shall  
14 be suspended immediately and the previously retired member  
15 shall become a member; and

16                   (b) upon termination of the subsequent  
17 employment, the previously retired member's pension shall be  
18 calculated pursuant to Paragraph (2) of Subsection [E] G of  
19 this section;

20                   ~~[(2) effective the first day of the month~~  
21 ~~following the month in which the retired member's earnings~~  
22 ~~total twenty-five thousand dollars (\$25,000) during a calendar~~  
23 ~~year, a retired member who returns to employment shall be~~  
24 ~~required to make contributions to the fund as specified in the~~  
25 ~~Public Employees Retirement Act; provided, however, that after~~

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1 ~~December 31, 2006, no additional contributions shall be~~  
2 ~~required pursuant to this paragraph;~~

3 (3) until the subsequent employment is  
4 terminated, the affiliated public employer that employs the  
5 retired member shall make contributions to the fund in the  
6 amount specified in the Public Employees Retirement Act or in a  
7 higher amount adjusted for full actuarial cost as determined  
8 annually by the association; and

9 (4) a retired member who returns to employment  
10 during retirement pursuant to this subsection is entitled to  
11 receive retirement benefits but is not entitled to acquire  
12 service credit or to acquire or purchase service credit in the  
13 future for the period of the retired member's re-employment  
14 with an affiliated public employer.

15 D. If a member who does not meet the requirements  
16 of Subsection C of this section retires and is subsequently  
17 employed by an affiliated public employer on or after July 1,  
18 2007, the retired member's pension shall be suspended the first  
19 day of the month following the month in which the retired  
20 member's earnings for a calendar year from that subsequent  
21 employment exceed fifteen thousand dollars (\$15,000).

22 [~~D.~~] E. The provisions of [~~Paragraphs (2) and~~]  
23 Paragraph (3) of Subsection C of this section [~~that require~~  
24 ~~employee or employer contributions~~] and the provisions of  
25 Subsection D of this section do not apply to:

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1 (1) a retired member who is appointed chief of  
2 police of an affiliated public employer, other than the  
3 affiliated public employer from which the retired member  
4 retired, or who is appointed undersheriff; provided that:

5 (a) the retired member files an  
6 irrevocable exemption from membership with the association  
7 within thirty days of appointment;

8 (b) each sheriff's office shall be  
9 limited to one undersheriff qualifying pursuant to this  
10 paragraph;

11 (c) the irrevocable exemption shall be  
12 for the chief of police's or the undersheriff's term of office;  
13 and

14 (d) filing an irrevocable exemption  
15 shall irrevocably bar the retired member from acquiring service  
16 credit for the period of exemption from membership; or

17 (2) a retired member employed by the  
18 legislature for legislative session work.

19 ~~[E.]~~ F. At any time during a retired member's  
20 subsequent employment pursuant to Subsection C or D of this  
21 section, the retired member may elect to suspend the pension.  
22 ~~[When the pension is suspended, the following conditions shall~~  
23 ~~apply]~~

24 G. When a pension is suspended pursuant to  
25 Subparagraph (a) of Paragraph (2) of Subsection C of this

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1 section or Subsection D or F of this section, the following  
2 conditions apply:

3 (1) the retired member who is subsequently  
4 employed by an affiliated public employer shall become a  
5 member. The previously retired member and the subsequent  
6 affiliated public employer shall make the required employee and  
7 employer contributions, and the previously retired member shall  
8 accrue service credit for the period of subsequent employment;  
9 and

10 (2) when a previously retired member  
11 terminates the subsequent employment with an affiliated public  
12 employer, [~~he~~] the previously retired member shall retire  
13 according to the provisions of the Public Employees Retirement  
14 Act, subject to the following conditions:

15 (a) payment of the pension shall resume  
16 in accordance with the provisions of Subsection A of this  
17 section;

18 (b) unless the previously retired member  
19 accrued at least three years of service credit on account of  
20 the subsequent employment, the recalculation of pension shall:  
21 1) employ the form of payment selected by the previously  
22 retired member at the time of the first retirement; and 2) use  
23 the provisions of the coverage plan applicable to the member on  
24 the date of the first retirement; and

25 (c) the recalculated pension shall not

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1 be less than the amount of the suspended pension.

2           ~~[F-]~~ H. The pension of a member who has three or  
3 more years of service credit under each of two or more coverage  
4 plans shall be determined in accordance with the coverage plan  
5 that produces the highest pension. The pension of a member who  
6 has service credit under two or more coverage plans but who has  
7 three or more years of service credit under only one of those  
8 coverage plans shall be determined in accordance with the  
9 coverage plan in which the member has three or more years of  
10 service credit. If the service credit is acquired under two  
11 different coverage plans applied to the same affiliated public  
12 employer as a consequence of an election by the members,  
13 adoption by the affiliated public employer or a change in the  
14 law that results in the application of a coverage plan with a  
15 greater pension, the greater pension shall be paid a member  
16 retiring from the affiliated public employer under which the  
17 change in coverage plan took place regardless of the amount of  
18 service credit under the coverage plan producing the greater  
19 pension; provided the member has three or more years of  
20 continuous employment with that affiliated public employer  
21 immediately preceding or immediately preceding and immediately  
22 following the date the coverage plan changed. The provisions  
23 of each coverage plan for the purpose of this subsection shall  
24 be those in effect at the time the member ceased to be covered  
25 by the coverage plan. "Service credit", for the purposes of

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1 this subsection, shall be only personal service rendered an  
2 affiliated public employer and credited to the member under the  
3 provisions of Subsection A of Section 10-11-4 NMSA 1978.  
4 Service credited under any other provision of the Public  
5 Employees Retirement Act shall not be used to satisfy the  
6 three-year service credit requirement of this subsection."

7 Section 2. Section 22-11-25.1 NMSA 1978 (being Laws 2001,  
8 Chapter 283, Section 2, as amended by Laws 2003, Chapter 80,  
9 Section 1 and by Laws 2003, Chapter 145, Section 1) is amended  
10 to read:

11 "22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS CONTINUED FOR  
12 CERTAIN MEMBERS--ADMINISTRATIVE UNIT CONTRIBUTIONS.--

13 A. Except as provided in Subsections B and E of  
14 this section, [~~beginning January 1, 2002 and continuing until~~  
15 ~~January 1, 2012~~] a retired member may begin employment at a  
16 local administrative unit and shall not be required to suspend  
17 retirement benefits if:

18 (1) either:

19 (a) the employment of the retired member  
20 begins prior to July 1, 2007; or

21 (b) the employment of the retired member  
22 begins between July 1, 2007 and June 30, 2009 and the local  
23 administrative unit has adopted a resolution declaring that the  
24 employment of the retired member will fill a critical need of  
25 the local administrative unit; and

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1                   (2) the member has not been employed as an  
2 employee or independent contractor by a local administrative  
3 unit for at least twelve consecutive months from the date of  
4 retirement to the commencement of employment or reemployment  
5 with a local administrative unit. If the retired member  
6 returns to employment without first completing twelve  
7 consecutive months of retirement, the retired member shall  
8 remove himself from retirement.

9                   B. A retired member who was retired on or before  
10 January 1, 2001, has not since suspended or been required to  
11 suspend retirement benefits pursuant to the Educational  
12 Retirement Act and is reemployed by a local administrative unit  
13 prior to July 1, 2007 may continue employment at the local  
14 administrative unit and shall not be required to suspend  
15 retirement benefits.

16                   C. A retired member who returns to employment  
17 during retirement pursuant to Subsection A, [~~or~~] B or E of this  
18 section is entitled to continue to receive retirement benefits  
19 but is not entitled to acquire service credit or to acquire or  
20 purchase service credit in the future for the period of the  
21 retired member's reemployment with a local administrative unit.

22                   D. A retired member who returns to employment  
23 pursuant to [~~Subsections~~] Subsection A, [~~or~~] B or E of this  
24 section shall not make contributions to the fund as specified  
25 in the Educational Retirement Act; however, the local

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1 administrative unit's contributions as specified in that act  
2 shall be paid to the fund as if the retired member was a non-  
3 retired employee.

4 E. Beginning July 1, 2003 and continuing [~~until~~  
5 ~~January 1, 2012~~] through July 1, 2007, a retired member who  
6 retired on or before January 1, 2001 and who has not been  
7 employed as an employee or independent contractor by a local  
8 administrative unit for at least ninety days may begin  
9 employment at a local administrative unit without suspending  
10 retirement benefits if the retired member was not employed by a  
11 local administrative unit for an additional twelve or more  
12 consecutive months after the initial date of the retirement;  
13 provided that the ninety-day period shall not include any part  
14 of a summer or other scheduled break or vacation period.

15 F. A retired member who returns to employment with  
16 a local administrative unit and, pursuant to the provisions of  
17 this section, is entitled to continue to receive retirement  
18 benefits shall not be required to suspend retirement benefits  
19 at any time in the future if the member remains employed by the  
20 local administrative unit or is employed by another local  
21 administrative unit; provided, however, that if the member  
22 voluntarily suspends retirement benefits at any time, the  
23 member shall be entitled to continue to receive retirement  
24 benefits pursuant to the provisions of this section only if the  
25 member would be eligible to do so based upon the effective date

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of the member's most recent retirement."

Section 3. REPEAL.--Laws 2004, Chapter 2, Section 1 is  
repealed.